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RACE, NATION-BUILDING AND LEGAL TRANSCULTURATION DURING THE HAITIAN UNIFICATION PERIOD (1822-1844): TOWARDS A DOMINICAN PERSPECTIVE

CHARLES R. VENATOR SANTIAGO¹

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In his 1891 dramatization of the murder of the virgins of Galindo, César Nicolás Penson described the murder of three young white Dominican girls while simultaneously using this event to describe the effects of the Haitian occupation on the Dominican nation and its people. The virgins of Galindo, like most of the important characters of his narrative, were white, beautiful and virtuous. In contrast, the perpetrators of the heinous acts, according to Penson and his interpretation of a national collective consciousness, were black and Haitian.² For Penson, both the eastern and western parts of the island of *La Hispaniola* were “in essence different in the racial composition of their inhabitants, in their language, customs, civilization, history, social order, political constitution, aspirations, and national character.”³ Penson’s narrative, based on an actual event, represented the Haitian unification period, which began in 1822 and lasted until 1844, as a period of national violence that reached the most intimate levels of the Dominican society. Haitian occupation, according to this ideology, sought to violate the most inner sanctums of the Dominican family. This was, according to this nationalist narrative, a historical period where Dominicans were dominated by an external aggressor who knew no boundaries.

What most Dominican nationalist narratives neglect to mention, however, is that the twenty-two year unification of the island under the governance of the Haitian Republic was also the most progressive period of Dominican history in more than 400 years. More importantly, while Dominican national identity narratives continue to be constituted in repudiation of the Haitian unification period, and in an

¹Ithaca College, Politics Department. This paper was prepared for the *Lat Crit VIII Symposium* held in Cleveland Ohio, May 1-4, 2003. It is intended to be a brief sketch of a larger and ongoing research project on legal transculturation in the Caribbean. I am indebted to Ginetta E.B. Candelario, Ambassador Guy Alexandre, Julio Enrique de Campo and Eddy E. Jaquez from the *Archivo General de la Nación*, Ambassador William Páez Piantini and Sra. Cristina de Sanchez from the *Secretaría de Estado de Relaciones Exteriores de la Republica Dominicana* for providing me access to important materials on Haitian and Dominican history. My research has also been funded by the generous support of Provost Peter Bardaglio and the Provost Office at Ithaca College.

²CÉSAR NICOLÁS PENSON, *COSAS AÑEJAS, TRADICIONES Y EPISODIOS DOMINICANOS* 196 (1975).

³*Id.* at 229 (translation mine).

affirmation of the separation of the Dominican Republic from the Haitian occupation, the Dominican Republic continues to use legal narratives and institutions that were introduced by the Haitians during the twenty-two year unification. Taking these tensions as a point of departure, this paper offers some preliminary reflections on the relationship between law, race, and nation building during the Haitian unification period.⁴ My contention is that, while the Haitian occupation can be described as a domination of Santo Domingo, it is also possible to discern some important ways in which Dominicans benefited from this relationship. More importantly, I suggest that there are some important moments where Dominicans participate in the Haitian nation building process.

This paper also draws on a critical reading of Fernando Ortiz's notion of legal transculturation as articulated in his book, *Cuban Counterpoint*, to reflect on the multiple clashes of legal cultures in the eastern part of the island during this period.⁵ My contention is that the unification period can be understood as a contested terrain where Haitian and Dominican political, social, and economic interests were continuously clashing and constituting a new national narrative. In a sense, the law became an ideological arena that mediated the clash of multiple traditions and interests. Drawing on Ortiz's notion of legal transculturation as an expression of nation building, I specifically look at the relationship between competing narratives of race, citizenship, and property ownership and constitutional narratives of nation building. As I do so, however, I am also recognizing that the *Constitution of 1816*⁶ was transplanted to the eastern part of the island, and that it would not be until 1843 that the residents of the former Santo Domingo would participate in shaping a new national legal narrative.⁷

I. HAITIAN AND DOMINICAN COUNTERPOINT?

In the late 1930s, the Cuban intellectual, Fernando Ortiz, proposed the use of the notion of transculturation as a neologism to replace the prevailing conception of acculturation. Suffice it to say that Ortiz adopted the notion of transculturation to explain the nuances of national formation as an expression of multiple cultural traditions engaging in a mutually constitutive relationship.⁸ Ortiz argued that transculturation could better explain how national formations could be understood as

⁴This paper is part of a larger on-going project concerned with the question of legal transculturation in the Caribbean. In a paper titled "*Race, Nation-Building and Legal Transculturation During The Haitian Unification Period (1822-1844): Towards A Haitian Perspective*," which was presented at the Lat Crit Colloquium on International and Comparative Law in Buenos Aires, Argentina in August 2003, I address in more detail the Haitian perspective on this period.

⁵FERNANDO ORTIZ, *CONTRAPUNTEO CUBANO DEL TABACO Y EL AZÚCAR* (Enrico Mario Santí, editor, Catedra, 2002).

⁶All of the Haitian constitutions discussed in this article are contained in LUIS MARIÑAS OTERO, *LAS CONSTITUCIONES DE HAITI* (1968).

⁷For a discussion of the *Constitution of 1843*, please refer to ALFONSO LOCKWARD, *LA CONSTITUCIÓN HAITIANO-DOMINICANA DE 1843* (1991).

⁸For a more expanded discussion of my interpretation of the notion of legal transculturation, see Charles R. Venator Santiago, *The Uses and Abuses of the Notion of Legal Transculturation: The Puerto Rican Example?* 13 *LA RAZA L.J.* (2002) 2: 441.

a process where multiple ethnic/racial cultures could come into contact and undergo a three step process of *deculturation* or *exculturation*, *acculturation* or *enculturation*, and ultimately give birth to a new national culture that was simultaneously informed by the transformed cultures.⁹ Accordingly, transculturation captured the nuances, ambiguity, and fluidity of this process that a more functionalist method failed to grasp or account for. In other words, transculturation better explained the ways in which multiple “parental” cultures gave birth to a new national culture that had both retained some of its parental traits while simultaneously being different.

Ortiz’s argument, however, is premised on a patriarchal and heterosexist interpretation of parenthood that ignores traditional notions of power. This is an important problem because this approach obscures distinct relations of power. In the context of this paper, it is evident that the Haitian regime occupied a position of power over the eastern side of the island. To this extent, it should be clear that my use of Ortiz’s argument recognizes the limitations of its application to the case in question.

While Ortiz suggested that the notion of transculturation could be applied to the legal or juridical realm, he did not discuss what legal transculturation would look like. In this project, I use the notion of legal transculturation as a point of departure to reflect on the relationship between race, multiple legal traditions, and the process of nation building. In other words, legal transculturation can be used to describe the nation building process as a “contact zone” where multiple legal traditions and cultures, as well as other narratives, clash and engage in a mutually constitutive relationship resulting in a distinct national project. However, as I have noted elsewhere, the notion of legal transculturation can obscure distinct power relationships between legal actors and other social participants in the legal process. This is a problem because law can often become an instrument of legal or political actors independent of its structures. For example, judges in the common law tradition often ignore precedents and the rule of *stare decisis* in their interpretation of the law, and in some cases, in order to make law.

The notion of legal transculturation provides an interesting point of departure to conceptualize how the Haitian regime under Boyer sought to build a unified nation that was composed of the eastern region which had been previously governed by a Spanish legal system and its respective traditions,¹⁰ and a Haitian legal system that drew from the French legal tradition, the emerging Napoleonic Code, and its own interpretation of these traditions in Saint Domingue. Boyer sought to unify the island’s institutions under one Haitian state governed by a Haitian legal narrative. This narrative, in turn, was informed by an ideological commitment to the creation of a nation that would protect any person of African or Indoamerican heritage. The Haitian project sought to create a republic that would protect the traditionally

⁹See ORTIZ, *supra* note 5, at 255.

¹⁰This is not to say that the French legal tradition had not taken root in Santo Domingo as early as 1801, but rather it appears to me that despite its early institutional presence, the institutions in Santo Domingo were governed by the Spanish legal tradition and more specifically by the *Laws of the Indies*. For a discussion of the presence of the French legal tradition in Santo Domingo prior to the Haitian unification period, see C.H. PRESTINAR, ORIGENES DEL DERECHO EN SANTO DOMINGO (FRANCIA 1802), DOCUMENTOS Y APUNTES (2000).

oppressed, and in some ways enable the emancipated slaves to succeed in a hostile world that promoted the enslavement of people of African and Indoamerican heritage. The Haitian project, at least at an ideological level, was an innovative national project. In contrast, the Spanish legal tradition was premised on the exploitation of people of African heritage and slavery. The protections afforded to Indoamericans represented a strategic effort to control the Spanish colonial subjects. In fact the *encomienda* system authorized the exploitation of Indoamericans. It is little wonder that these two ideologically opposed traditions did not clash more violently. My contention is that Ortiz's notion of transculturation can be used to understand the tensions, continuities, and discontinuities inherent in the creation of a national legal narrative that is informed by legal interpretations that draw from these two opposing traditions.

I also take for granted that law and society are always engaged in a mutually constitutive relationship. This means that legal rules often shape the ways in which society governs itself, and social norms often shape the ways in which legal actors make sense of the law. Legal narratives of race were central to the Haitian revolution, the unification project, and the eventual Dominican separation. For Haitians, the law represented an ideological institutionalization of the revolution.¹¹ For the majority of inhabitants of the eastern part of the island, the promise of racial equality represented a rejection of traditional institutions of subordination such as slavery. For the first time, former slaves were given property rights and access to landownership. In contrast, some white residents of the east argued that the constitutional provisions prohibiting whites from owning property in Haiti effectively disenfranchised the white Dominicans, despite the fact that these provisions were not implemented in the eastern side of the island.¹² This article assumes that ideological narratives of race, such as those embodied in the Haitian revolution, shaped the formation of national legal narratives, and that national legal narratives of race also shaped the contours of national social and political narratives of race and identity.

II. PRELUDES

In a recent trip to the *Museo de las Casas Reales*, a tour guide who was describing to me the geo-political history of *La Hispaniola* noted that cannibals or Caribes had originally populated the western part of the island, today known as Haiti, whereas noble savages or Tainos had inhabited the eastern part. When I took him to task on his interpretation of the island's social geography, he gave me as evidence to his claims the story of the destruction of the *Navidad* garrison by the indigenous population. Of course, he neglected to consider whether the *conquistadores* had been responsible for creating the conditions that led to their demise. Ironically, this exchange is symptomatic of a kind of ideology that has dominated Dominican historiography until recent times. This ideology locates the source of evil in the western part of the island, and more specifically in Haiti, and situates the Dominican

¹¹For an important discussion of the ideological principles of the Haitian revolution, see generally C.L.R. JAMES, *THE BLACK JACOBINS, TOUSSAINT L'OUVERTURE AND THE DOMINGO REVOLUTION* (Vintage Books, 1989) (1963).

¹²JEAN PRICE MARS, *LA REPÚBLICA DE HAÍTÍ Y LA REPUBLICA DOMINICANA* 300-301 (Sociedad Dominicana de Bibliófilos, Inc. 2000) (1953).

Republic as a fountain of goodness and virtue. This nationalist ideology has also been used to explain the historical relationship between the eastern and western regions of the island of *La Tortuga*, which reached its apogee in 1822 when Haitian troops, under the leadership of Jean Pierre Boyer, marched into Santo Domingo and unified the island for more the twenty-one years under one administrative nation-state.

Despite the fact that the Haitian Republic emerged out of a particular historical moment in the early 1800s, Dominican historians have traditionally emplotted the relation between the Spanish part of the island and the western part of the island in a historical narrative that dates back to the colonization of the island. Most of these narratives have focused on the disputes over the border separating the two parts of the island.¹³ In other words, there is a tendency among nationalist historians to explain the birth of the Dominican Republic as an expression of a historical struggle against an enemy that has always been lurking outside of the nation's gates.

In 1493, Cristóbal Colón stumbled on the island of Haiti, as it was generally known by one of various indigenous communities living in the island at the time, during his first voyage to the region.¹⁴ Colón promptly renamed the island *La Hispaniola* in honor of the Castilian Queen. Before returning to the Iberian Peninsula, Colón established a garrison with the remains of two of his ships and left some of the members of his mission to await his return in the port of Navidad located in the northern part of present day Haiti. During his second voyage, Colón found the garrison destroyed and, upon his return, he explored the southeastern part of the island, which would eventually become Santo Domingo. Notwithstanding the *Capitulaciones de Santa Fé* and the Crown's original commitment to recognize Colón and his successor's power to govern the island, the Crown appointed Nicolás de Ovando to govern the island in 1501. Between the early 1500s and 1822, the Spanish part of the island was generally governed by a loose knit collection of laws, orders, decrees, legislation, and customs known as the *Laws of the Indies*. In fact, the Spanish part of the island, named Santo Domingo, soon became the seat of the first royal *Audiencia* in the Spanish colonies of the western hemisphere.

Spanish settlers generally established themselves in the eastern part of the island, while French and British pirates eventually took over the northeastern region. Most of the inhabitants generally enjoyed a profitable and stable commercial relationship until the nineteenth century. By 1664, the French monarchy had delegated a representative from the West Indies Company to govern the flourishing French colony in the western part of the island. However, continental hostilities between the Spanish/British alliance and the French fueled the *Seven Years War*, which threatened to use the island as a staging ground for these hostilities. The war came to an end with the signing of the *Treaty of Ryswick of 1697* which, among other things,

¹³See MANUEL ARTURO PEÑA BATLLE, *HISTORIA DE LA CUESTION FRONTERIZA DOMINICO-HAITIANA* (1988); T. PINA CHEVALIER, *DATOS HISTORICOS SOBRE LA FRONTERA DOMINICO-HAITIANA* (1996); and MANUEL A. MACHADO, *LA CUESTION FRONTERIZA DOMINICO-HAITIANA* (1912). More recently, see proceedings from SECRETARÍA DE ESTADO DE LAS FUERZAS ARMADAS, SEMINARIO: LA FRONTERA, PRIORIDAD EN LA AGENDA NACIONAL DEL SIGLO XXI, 8 al 13 de julio del 2003, Santo Domingo, Republica Dominicana.

¹⁴CRISTÓBAL COLÓN, *LOS CUATRO VIAJES TESTAMENTO 78* (Edición de Consuelo Varela, Libro de Bolsillo, 2nda impresion 1986) (1996).

formally divided the island of *La Hispaniola* into two distinct regions, the western one, also known as Saint Domingue, governed by the French, and the eastern one, or Santo Domingo, governed by the Spanish.

Saint Domingue eventually developed a plantation economy and became the most profitable French colony during the 18th century. In contrast, Santo Domingo developed a cattle economy, and was virtually abandoned by Spain. Both regions relied on distinct legal narratives to legitimate the exploitation of black slaves and the subordination of mulatos. As I suggested above, both colonies retained important commercial relations, which were reaffirmed and institutionalized with the 1777 *Treaty of Aranjuez*. Ironically, the key feature of this treaty was the delineation of a fixed border separating both colonial regions. Hostilities between the French and Spanish regimes were re-ignited as a result of the French Revolution in 1789. One of the outcomes of these confrontations was the cession of Santo Domingo to France under the tenets of the *Treaty of Basilea* of 1795.¹⁵ However, the French regime was unable, and to certain degree unwilling, to occupy Santo Domingo until 1801 when the forces of Toussaint L'Ouverture took possession of the island in the name of France.¹⁶

Notwithstanding the shortness of L'Ouverture's presence, which would only last a little over a year before Napoleon had him arrested, his legal initiatives established key important precedents that would inform the Haitian Revolution and its subsequent policies regarding the unification of the island and the juridical status of the inhabitants of Santo Domingo within the Haitian Republic.¹⁷ In 1801, L'Ouverture managed to consolidate the French colony and declare it an autonomous province of France. He also adopted the *Constitution of 1801*, which established some of the basic principles of the subsequent Haitian revolution. More importantly, L'Ouverture also managed to secure a special commercial relationship with the United States, bypassing the French regime.

The first article of this constitutional text declared the unification of the French colonial territories.¹⁸ This was an important affirmation of the *Treaty of Basilea* and the first institutionalization of this agreement. Moreover, Article 1 accelerated the administrative unification of the island under the French regime. This unification also created the conditions that would enable the adoption of a mixed juridical regime in Santo Domingo. To be sure, as Wenceslao Vega B. notes, by 1802 Napoleon had issued a decree authorizing the continuation and application of the Spanish legal system that had been in place prior to the French occupation for the former Spanish subjects residing in the island. French immigrants, however, would be governed by the same legislation available in the metropolis. This mixed legal

¹⁵WENCESLAO VEGA B., *LOS DOCUMENTOS BASICOS DE LA HISTORIA DOMINICANA* 133 (1994).

¹⁶Wendell G. Schaeffer, *The Delayed Cession of Spanish Santo Domingo to France, 1795-1801*, 29 *THE HISP. AM. H. REV.* February 1949, 46-68.

¹⁷C.L.R. JAMES, *THE BLACK JACOBINS, TOUSSAINT L'OURVERTURE AND THE SAN DOMINGO REVOLUTION* (1989).

¹⁸See MARIÑAS OTERO, *supra* note 6, at 109.

regime would ultimately provide a dual system of law and rights for the citizens of French and Spanish heritage residing in Santo Domingo.¹⁹

Yet perhaps the most controversial provisions of the *Constitution of 1801* were the abolition of slavery and the recognition work place protections afforded to blacks and mulattoes. While the abolition of slavery had a disparate impact in the western part of the island, where close to 90% of the population was enslaved, in the eastern part of the island at least 20% of the population was emancipated. Moreover, Article 4 established that employers could not discriminate on the basis of color.²⁰ In other words, not only did the *Constitution of 1801* emancipate slaves, but it also granted former slaves social citizenship rights. Emilio Cordero Michel argues that only minority of residents of Santo Domingo, namely aristocrats, slave-owners, hispanophiles, and racists, refused to support L'Ouverture's regime.²¹

By 1802, however, Napoleon had arrested L'Ouverture and replaced him with his brother-in-law, General Victor-Emmanuel Leclerc. One of the first orders of business in Leclerc's agenda was to re-establish slavery in the French colonies. Cordero Michel notes that one of the key effects of this legislation was to drown the potential development of a new petty bourgeoisie. In addition, the cattle ranching elite and the larger landowners were also enabled to consolidate their power and maintain distinct institutional protections.²² More importantly, the contours of Santo Domingo's legal narrative and institutions were further cemented by the continuation of these elite institutions.

Napoleon's betrayal of L'Ouverture, his reestablishment of slavery, and the brutal repression of blacks in Saint Domingue fueled the Haitian Revolution. Thus, by 1803 emancipated slaves and mulattoes had taken control of the western part of the island and, by 1804, the first black republic had been born. In contrast, the French retained the eastern part of the island until 1809, when they ceded Santo Domingo back to Spain. Of course, at the time José Bonaparte, Napoleon's brother, had been struggling to control Spain during the French occupation and the abdication of Fernando the VII.²³ Notwithstanding the continental struggles, Santo Domingo became a part of Spain until 1821. This period, generally known as the period of *La España Boba*, was characterized by a virtual abandonment of the colony by Spain. Santo Domingo was governed by a succession of corrupt governors and administrators. From a legal point of view, the *Laws of the Indies* represented the principle source of law with the eventual permeation of the principles established by the Cadiz movement in 1812.²⁴

¹⁹ WENCESLAO VEGA B., *HISTORIA DEL DERECHO DOMINICANO* 109 (2002) (hereafter HISTORIA).

²⁰ See MARIÑAS OTERO, *supra* note 6, at 109.

²¹ EMILIO CORDERO MICHEL, *LA REVOLUCIÓN HAITIANA Y SANTO DOMINGO* (2000).

²² *Id.*

²³ JORDI SOLÉ TURA Y ELISEO AJA, *CONSTITUCIONES Y PERÍODOS CONSTITUYENTES EN ESPAÑA: 1808-1936* (Siglo XXI, 1977) (1997).

²⁴ The Cadiz movement represented a liberal challenge by Spaniards to both the French domination and the monarchy. However, a close reading of the French constitution and the Cadiz constitutional text of 1812 suggests that there were a number of important similarities

In contrast, Haitians had been simultaneously struggling to consolidate and unify the new republic. Haiti had been fragmented by numerous conspiracies, murders, and intrigues. Under the leadership of Emperor Jacques Dessalines, Haiti adopted its first Constitution in 1805. This text embodied the basic ideological principles of the revolution and established three of the key issues of contention that would inform the clashes between Dominican elites and the Haitian regime during the unification period, namely the unification of the island, the racial conception of citizenship, and the redefinition of property ownership. To be sure, Articles 1 and 18 provided for the administrative unification of all of the former French colonies, including the eastern part of the island.²⁵ Stated differently, the Haitian project envisioned itself as encompassing the whole island and, most importantly, as liberating the oppressed from the French empire's tyranny.

The second Article of this Constitution permanently abolished slavery in the island. This provision not only represented an affirmation of the French and Haitian revolutions, but it also signified a complete break with the metropolis. However, the abolition of slavery has to be understood in relation to a social conception of citizenship rights and property ownership. Thus, Article 12 provided that whites, regardless of their nationality, would be prohibited from owning property or holding titles in the Haitian territory. Article 13, however, made a special exception for white women who married Haitians, and some German and Polish officials who worked in a public capacity. Finally, Article 14 established that all Haitian nationals would be characterized under the generic title of blacks.²⁶ Together, these provisions sought to provide some protections against foreign white investors and other imperialists, while affirming the principle that Haiti would be a national safe haven for the survivors of white imperialism.

With Dessalines's untimely assassination in 1806 at the hands of Henri Christophe's henchmen, Haiti entered a period of constitutional fragmentation. The republic was immediately divided into a southern region, governed by Alexandre Peti6n, a mulatto dictator, and a northern region, governed by Henri Christophe, a delusional self-declared emperor. Between 1806 and 1816, both regions adopted appropriate constitutions for their regimes, which maintained some of the ideological commitments of the Haitian Revolution. In 1816, after having been reelected in 1815, Peti6n managed to enact a new Constitution that would be in place until 1843.

This Constitution continued to reproduce the basic ideological commitments instituted in the *Constitution of 1805*, while modifying others. Two important modifications that are relevant to this paper were the racial criteria for nationality and citizenship, and the nature of property ownership. With regards to the question of nationality, Article 44 of the *Constitution of 1816* provided that all persons of African and Indo-American heritage could be entitled to a Haitian nationality and the corresponding citizenship rights. This provision represented a general ideological concern with authenticity and the legitimacy of the Haitian project. In general, Haitian political figures were deeply concerned with establishing some historical connection to a civilization, hence the adoption of the indigenous name of the island.

between the two texts. At present, it is beyond the scope of this text to address the contradictions of the Cadiz movement.

²⁵See MARIÑAS OTERO, *supra* note 6, at 121-23.

²⁶*Id.* at 122.

Presumably, by shifting from a generic conception of blackness to one of African or Indo-American heritage, the Haitian project could establish a connection with a longer past and an older civilization.²⁷

The second modification that is relevant to this project has to do with the criteria for property ownership. In an effort to forestall any possible uprisings and threats to his power, Petión began to divide the land in his region into small plantation tenancies, which could be given to his military officers and soldiers. This resulted in the redefinition of a traditional plantation or agrarian based economy that created a new Haitian bourgeoisie. Perhaps following a Lockean principle of property ownership,²⁸ Article 22 stipulated that land retention and property ownership would be contingent on the owner's continuous use of the land.²⁹ Ultimately, the *Constitution of 1816* enabled the creation of a new Haitian aristocracy that could be modeled after the French model. More importantly, this would be the Constitution that would be in place during most of the Haitian occupation of Santo Domingo.

Petión fell victim to an intrigue by 1818 and the General Jean Pierre Boyer managed to usurp power in a relatively bloodless coup.³⁰ By 1820, Christophe had committed suicide and Boyer had managed to capture the northern realm. In 1821, Boyer had managed to begin the re-unification of Haiti under one government. Thus, the occupation of Santo Domingo needs to be situated in relation to Boyer's project of unification, a project that included all of the former French colonies in the island.

In Santo Domingo, a dominant sector of the Creole elite orchestrated the emancipation from Spain in 1821. Under the leadership of José Núñez de Cáceres, the residents of Santo Domingo constituted their first independence and petitioned admission to Simón Bolívar's continental project, *La Gran Colombia*. Yet, like Bolívar, Núñez de Cáceres neglected to promote the abolition of slavery and by extension, managed to alienate the majority of Dominicans. Franklin Franco Pichardo contends that Núñez de Cáceres was merely acting on his racist ideology, and like most Dominican elites at the time, he was unconcerned for the majoritarian popular sectors.³¹ Two months later, Boyer marched into Santo Domingo and occupied the eastern region until his fall in 1843. His occupation enjoyed the support of the majority of Dominicans and the agricultural elite of the *Cibao* region.

III. FROM OCCUPATION TO UNIFICATION

In his book *La República de Haití y La República Dominicana*, first published in 1953, the Haitian scholar Jean Price Mars offered evidence that Dominican elites welcomed the Haitian occupation.³² Not only did he provide transcriptions of

²⁷*Id.* at 166.

²⁸ JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* 24-30 (C.B. Macpherson, ed. 1690) (1980).

²⁹See MARIÑAS OTERO, *supra* note 6, at 164-65.

³⁰John Edward Baur, *Mullatto Machiavelli, Jean Pierre Boyer, and The Haiti of His Day*, 32 *The Journal of Negro History*, July 1947, at 307-353.

³¹FRANKLIN FRANCO PICHARDO, *EL PENSAMIENTO DOMINICANO: 1780-1940* 90-91(2001).

³²PRICE, *supra* note 12, at 113-36.

original letters sent to Boyer by local elites, but he also argued that the majority of the Dominican population would benefit from the more egalitarian policies of the Haitian regime. Despite these arguments, Dominican nationalist narratives have traditionally represented the occupation as a violent domination.³³ In fact, as I noted above, Dominican nationalist narratives have been constituted in rejection to the twenty-two year occupation. Alternatively, some of the more recent historiography suggests that, while the Haitian unification period was indeed an occupation, the juridical and political nature of this occupation needs to be understood in its egalitarian context.³⁴ While I agree with the latter approach, I will argue that the period between 1822 and 1843 was representative of an occupation, albeit one that was beneficial to the majority of the population, but that there was a transformation in the relationship between the eastern and western parts of the island in 1843 that can be understood as an episodic moment of transculturation.

From a legal perspective, it is evident that the Spanish legal narrative had been devised to legitimate a local elite in Santo Domingo with feudal pretensions. One of the clearest examples of this argument can be discerned from the elimination of the Spanish *Fueros* and the protests organized by the Catholic Church over their authority in relation to the Haitian regime.³⁵ Clearly, President Boyer transplanted the Haitian Constitution of 1816 to Santo Domingo. Moreover, it is not readily evident that residents from Santo Domingo participated in the development of the national legislation. Finally, the Franco-Haitian legislation could not accommodate the localist character of the Spanish legal traditions. This legislation was premised on a certain degree of administrative centralization that was inconsistent with the Spanish legal traditions.

More importantly, the Haitian project was informed by an ideological commitment to the nation, citizenship, and a general rupture with a monarchical past. Ironically, the Haitian ideology embraced the French Revolution's egalitarian ideology, which was inconsistent with the traditional Spanish narrative. The question remains, however, whether Dominican jurists interpreted and applied the French legislation in a manner that reflected their formation in the Spanish juridical culture. I suspect that they did. However, I am unable to substantiate this suspicion at present. This remains to be discerned.

Earlier in this paper, I suggested that there were two socio-legal issues of contention present during the unification period, namely the question of race, and the requirements for property ownership. It is important to note that while these were issues of contention among a small elite, these elites controlled significant resources and capital in Santo Domingo. Dominican nationalist narratives have traditionally deployed these racist concerns to represent a Dominican collective feeling, while dismissing the material reality of the popular sectors during this period. Based on what I have been able to discern from the available literature on this period, I think that most Dominicans would have agreed with Marx's contention that "life involves

³³See, e.g., Manuel Cruz Méndez, *Cultura y sociedad durante la ocupación Haitiana, 1822-1844*, 27 *Boletín del Museo del Hombre Dominicano* (1999): 149-164; see also EMILIO RODRÍGUEZ DEMORIZI, *INVASIONES HAITIANAS DE 1801, 1805 Y 1822* (1955).

³⁴ROBERTO CASSÁ, *HISTORIA SOCIAL Y ECONÓMICA DE LA REPÚBLICA DOMINICANA* 174 (2002).

³⁵Baur, *supra* note 30, at 83-88.

before everything else eating and drinking, a habitation, clothing, and many other things.”³⁶

Roberto Cassá has suggested that the abolition of slavery during the Haitian occupation was merely one aspect of the Haitian egalitarian project. This emancipation, he contends, was complemented with the extension of citizenship rights that extended social protections to the emancipated slave.³⁷ In keeping with Petión’s notion of property and an agrarian economy, Boyer enabled some of the popular sectors to challenge the cattle ranching monopolies in the east, and the Church’s hoarding of large, fertile, and unused lands. One of Boyer’s earliest acts, was to nationalize unused and abandoned lands and to distribute these among former slaves and other disenfranchised inhabitants. For example, Boyer’s early rural codes repudiated the Spanish land laws that were centered on the notion of communal land rights, which were in turn designed to protect the cattle ranching economy and the Church’s domains. The effect of this redistribution of resources was to transform the Dominican economy into a plantation or agrarian economy with a larger taxable population that could contribute to the national treasury while maintaining a degree of autonomy.

But was there a process of transculturation during the unification? Cassá suggests that Dominicans became an oppressed national group within the Haitian nation-state. This oppression took material form in the cultural, legal, racial, and political realms. However, Cassá further argues, that the Haitian occupation cannot be understood as a form of imperialism because Dominicans were given a juridical equality to Haitians, both in theory and to a large extent in practice.³⁸ It follows that the Haitian nation-building project during the unification period can be understood as encompassing a process of legal transplantation and national acculturation. Thus, the Haitian nation-building narrative can be understood as a hegemonic project that sought to absorb the Dominican nation into the republic without allowing Dominicans to participate in an equitable manner.

I think, however, that this argument needs to be understood in the context of the Boyer administration. By this, I mean to suggest that when Boyer was exiled in 1843, and the reformist regime of Charles Herard took control of Haiti, we began to discern a departure from the occupation ideology to one of integration. To be sure, one of the first acts of the Herard regime was to develop a new Constitution for Haiti that would counter the despotic practices of the Boyer regime. Haitians sought that a liberal Constitution could begin to transform the republic and help prevent the rise of other dictators. Thus, for the first time since the occupation of 1822, the Haitian regime incorporated Dominican representatives in a constitutive assembly.³⁹

Interestingly, the main tension raised by the Dominican “delegation” during the 1843 constitutive assembly debates was the question of race. To be sure, the Dominican jurist Buenaventura Báez introduced a motion that for a constitutional

³⁶Karl Marx, *The German Ideology*, in DAVID MCCLELLAN, ED. KARL MARX: SELECTED WRITINGS 181 (2001).

³⁷CASSÁ *supra* note 34, at 174-75.

³⁸CASSÁ *supra* note 34, at 174.

³⁹EMILIO RODRÍGUEZ DEMORIZI, LA CONSTITUCIÓN DE SAN CRISTÓBAL: 1844-1854 375-380 (1980).

provision that would allow whites to marry a Haitian woman and become naturalized after a ten-year residency period. At this point, the naturalized white Haitian would be entitled to own property.⁴⁰ Dominican elites argued that they were victims of discrimination and they were prevented from owning property because of their race and color. Of course, it is evident that Báez' motion was designed to spark some debate because Haitians had generally respected Dominican property claims and had taken a *de facto* blind eye towards white Dominicans. However, the assembly rejected this motion. To do otherwise would have meant that the republic was betraying its revolutionary commitment to persons of African and Indo-American heritage. Yet, it could have been possible to make an exception for white Dominicans following the example of the Constitution of 1805.

My point is that, despite the unwillingness of the Haitian regime to incorporate the racist concerns of the Dominican elite, the incorporation of representatives from the eastern part of the island represented an opening for the integration of the Dominican perspective in the formation of a new Haitian national project. I suspect that with time, the Dominicans could have helped to shape a new Haitian national project. It is perhaps in this particular moment where we can discern the possibility of the creation of a distinct national identity that would have been informed by multiple socio-legal traditions.

IV. PRELIMINARY CONCLUSIONS

Part of the challenge of this project is to substantiate my suspicions. Most of my research has been circumscribed to a survey of the secondary literature, and the available collections of documents. Most of the legal documentation of this period seems to have disappeared from the official archives in the island. To this extent this paper represents a work in progress that seeks to clarify an important but obscure period in the histories of Haiti and the Dominican Republic.

I will, however, take a further risk in suggesting that the Haitian unification period represents an important case study for the understanding of the formation of a national identity as an expression of a clash of juridical cultures. I think that the notion of transculturation can be used to highlight the centrality of a clash of juridical traditions in the formation of national institutions and a national identity. In this case, it is evident that Dominican nationalist narratives have been constituted around the implications of a Haitian racist narrative for white elites residing in the eastern part of the island. I would argue, however, that there is a clear need to investigate the ways in which legal actors interpreted and applied the law during the Haitian unification process, and to discern the ways in which racist and racist narratives shaped their law making.

⁴⁰*Id.* at 376-77.